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Attorneys for Defendant  
COMCAST INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

16 DANIEL KEATING-TRAYNOR on  
17 behalf of himself and all others similarly  
situated;

18 || Plaintiffs

19 || VS.

20 AC SQUARE INC.; COMCAST INC.;  
AFSHIN GHANEH; ANDREW  
21 BAHMANYAR; AND DOES 1-60  
INCLUSIVE;

### Defendants.

Case No. CV-08-2907-MHP

**[PROPOSED] ORDER GRANTING  
DEFENDANT COMCAST INC.'S MOTION  
TO DISMISS**

**FRCP Rule 12(B)(6)**

Date: September 15, 2008  
Time: 2:00 p.m.  
Courtroom: 15  
Judge: Honorable Marilyn H. Patel

WHEREFORE, on September 15, 2008, the Motion to Dismiss Plaintiff Daniel Keating-Traynor's ("Plaintiff") First Amended Complaint filed by Defendant Comcast Inc. ("Comcast" or "Defendant") came on for regularly scheduled hearing in Courtroom Fifteen, the Honorable Marilyn H. Patel presiding. Daryl Landy of Morgan, Lewis & Bockius LLP appeared on behalf

1 of Comcast and Daniel Berko appeared on behalf of Plaintiff. Upon consideration of the  
2 pleadings, papers, and arguments of counsel, and with good cause shown, it is hereby

3 **ORDERED AND ADJUDGED THAT:**

4 Defendant's Motion is **GRANTED**.

5 Plaintiff's First Claim for Violation of the Fair Labor Standards Act, 29 U.S.C. section  
6 201, *et seq.* ("FLSA") is dismissed, without leave to amend, because it is time-barred by the  
7 FLSA's maximum three-year statute of limitations. 29 U.S.C. § 255.

8 Plaintiff's Second Claim is also dismissed, without leave to amend, because it is time-  
9 barred by the maximum three-year statute of limitations. *Harrell v. 20th Century Ins. Co.*, 934  
10 F.2d 203, 208 (9th Cir. 1991) (holding applicable statute of limitations for a civil conspiracy  
11 claim is statute of limitations for underlying claim); *Risk v. Kingdom of Norway*, 707 F. Supp.  
12 1159, 1170, n. 13 (N.D. Cal. 1989) (same).

13 Accordingly, Plaintiff's First Amended Complaint against Comcast, including all class  
14 allegations, is dismissed, in its entirety, without leave to amend.

15 **IT IS SO ORDERED.**

16  
17 Dated: \_\_\_\_\_

By: \_\_\_\_\_  
18 United States District Court Judge

19 DB2/20782612.3